

UNITED STATES OF AMERICA.
(VISITING FORCES) ACT, 1942.

(5 & 6 Geo. 6.)

CHAPTER 31

An Act to give effect to an agreement recorded in Notes exchanged between His Majesty's Government in the United Kingdom and the Government of the United States of America, relating to jurisdiction over members of the military and naval forces of the United States of America. [6th August 1942.]

Whereas His Majesty, in exercise of the powers conferred on Him by subsection (3) of section one of the Allied Forces Act, 1940, and of all other powers enabling Him in that behalf, has been pleased, by Order in Council, to make provision defining the relationship of the authorities and courts of the United Kingdom to the military and naval forces of the United States of America who are or may hereafter be present in the United Kingdom or on board any of His Majesty's ships or aircraft, and facilitating the exercise in the United Kingdom or on board any such ship or aircraft of the jurisdiction conferred on the service courts and authorities of the United States of American by the law of that country:

And whereas the Notes relating to jurisdiction over members of the said forces set out in the

Schedule to this Act have been exchanged between His Majesty's Government in the United Kingdom and the Government of the United States of America:

And whereas it is expedient to give effect to the agreement recorded by the said Notes:

Now, therefore, be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1.—(1) Subject as hereinafter provided, no criminal proceedings shall be prosecuted in the United Kingdom before any court of the United Kingdom against a member of the military or naval forces of the United States of America:

Provided that upon representations made to him on behalf of the Government of the United States of America with respect to any particular case, a Secretary of State may by order direct that the provisions of this subsection shall not apply in that case.

(2) The foregoing subsection shall not affect any powers of arrest, search, entry, or custody, exercisable under British law with respect to offences committed or believed to have been committed against that law, but where a person against whom proceedings cannot, by virtue of that subsection, be prosecuted before a court of the United Kingdom is in the custody of any authority of the United Kingdom, he shall, in accordance with such general or special directions as may be given by or under the authority of a Secretary of State, the Admiralty, or the Minister for Home Affairs in Northern Ireland, for the

purpose of giving effect to any arrangements made by His Majesty's Government in the United Kingdom with the Government of the United States of America, be delivered into the custody of such authority of the United States of America as may be provided by the directions, being an authority appearing to the Secretary of State, the Admiralty, or the Minister, as the case may be, to be appropriate having regard to the provisions of any Order in Council for the time being in force under the Act hereinbefore recited and of any orders made thereunder.

(3) Nothing in this Act shall render any person subject to any liability whether civil or criminal in respect of anything done by him to any member of the said forces in good faith and without knowledge that he was a member of those forces.

2.—(1) For the purposes of this Act and of the Allied Forces Act, 1940, in its application to the military and naval forces of the United States of America, all persons who are by the law of the United States of America for the time being subject to the military or naval law of that country shall be deemed to be members of the said forces:

Provided that no person employed in connection with the said forces, not being a citizen or national of the United States of America, shall be deemed to be a member of those forces unless he entered into that employment outside the United Kingdom.

(2) For the purposes of any proceedings in any court of the United Kingdom, a certificate issued by or on behalf of such authority as may

be appointed for the purpose by the Government of the United States of America stating that a person of the name and description specified in the certificate is, or was at a time so specified, subject to the military or naval law of the United States of America, shall be conclusive evidence of that fact.

(3) For the purposes of any proceedings in any court of the United Kingdom in which the question is raised whether a party to the proceedings is, or was at any time, a member of the military or naval forces of the United States of America, any such certificate as aforesaid relating to a person bearing the name in which that party is charged or appears in the proceedings shall, unless the contrary is proved, be deemed to relate to that party.

(4) Any document purporting to be a certificate issued for the purposes of this section, and to be signed by or on behalf of an authority described as appointed by the Government of the United States of America for the purposes of this section, shall be received in evidence, and shall, unless the contrary is proved, be deemed to be a certificate issued by or on behalf of an authority so appointed.

3.—(1) His Majesty may by Order in Council direct that the foregoing provisions of this Act shall, subject to such adaptations and modifications as may be specified in the Order, have effect in any colony or in any British protectorate or in any territory in respect of which a mandate on behalf of the League of Nations is being exercised by His Majesty's Government in the United King-

dom, in like manner as they have effect in the United Kingdom.

(2) An Order in Council under this section may be revoked or varied by a subsequent Order in Council.

4. This Act may be cited as the United States of America (Visiting Forces) Act, 1942.

UNITED STATES OF AMERICA

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(5 & 6 Geo. 6)

SCHEDULE

NOTES EXCHANGED BETWEEN HIS MAJESTY'S GOVERNMENT IN THE UNITED KINGDOM AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA

No. W. 10338/13/64

FOREIGN OFFICE, S. W. 1.

27th July, 1942.

YOUR EXCELLENCY, Following the discussions which have taken place between representatives of our two Governments, His Majesty's Government in the United Kingdom are prepared, subject to the necessary Parliamentary authority, to give effect to the desire of the Government of the United States that the Service courts and authorities of the United States Forces should, during the continuance of the conflict against our common enemies, exercise exclusive jurisdiction in respect of criminal offences which may be committed in the United Kingdom by members of those Forces, and they are ready to introduce in

Parliament the necessary legislation for this purpose.

2. It is appreciated, however, that cases may arise where for particular reasons the American authorities may prefer that their courts should not exercise the above jurisdiction, and His Majesty's Government would accordingly propose that in any case in which a written communication to that effect is received from the Diplomatic Representative of the United States it should be open to the appropriate British authority to restore the jurisdiction of the courts of the United Kingdom to deal with that case.

3. In view of the very considerable departure which the above arrangements will involve from the traditional system and practice of the United Kingdom there are certain points upon which His Majesty's Government consider it indispensable first to reach an understanding with the United States Government. I have accordingly the honour to invite Your Excellency to be so good as to lay the following enquiries and observations before your Government and to inform me of their attitude thereupon.

4. In the first place, the readiness of His Majesty's Government in the United Kingdom to agree to the exercise by United States Service courts of exclusive jurisdiction in respect of offences by members of their Forces is based upon the assumption that the United States Service authorities and courts concerned will be able and willing to try and, on conviction, to punish all criminal offences which members of the United States Forces may be alleged on sufficient evidence to have committed in the United Kingdom,

and that the United States authorities are agreeable in principle to investigate and deal with appropriately any alleged criminal offences committed by members of the United States Forces in the United Kingdom which may be brought to their notice by the competent British authorities, or which the American authorities may find to have taken place.

5. Secondly, His Majesty's Government will be glad if Your Excellency will confirm their understanding that the trial of any member of the United States Forces for an offence against a member of the civilian population would be in open Court (except where security considerations forbade this) and would be arranged to take place promptly in the United Kingdom and within a reasonable distance from the spot where the offence was alleged to have been committed, so that witnesses should not be required to travel great distances to attend the hearing.

6. Thirdly, His Majesty's Government propose that no member of the United States Forces should be tried in the United Kingdom by a Service Court of the United States of America, for an offence committed by him before 7th December, 1941.

7. Fourthly, while His Majesty's Government in the United Kingdom would not wish to make the arrangements in regard to jurisdiction over members of the United States Forces in this country dependent upon a formal grant of reciprocity in respect of United Kingdom Forces in the territory of the United States of America, I feel that Your Excellency will appreciate that the considerations which have convinced His Majesty's

Government in the United Kingdom that the interests of our common cause would be best served by the arrangements which they are prepared to make as regards jurisdiction over American forces in the United Kingdom would be equally applicable in the case of British forces which in the course of the war against our common enemies may be stationed in territory under American jurisdiction. It would accordingly be very agreeable to His Majesty's Government in the United Kingdom if Your Excellency were authorized to inform me that in that case the Government of the United States of America will be ready to take all steps in their power to ensure to the British forces concerned a position corresponding to that of American forces in the United Kingdom under the arrangements which His Majesty's Government are willing to make. The considerations indicated in paragraph 2 above would naturally apply and His Majesty's Government would be prepared to authorise the Diplomatic Representative of His Majesty in the United States to notify the competent American authorities in cases where the appropriate British authorities preferred not to exercise jurisdiction.

8. Fifthly, the proposal to ensure to the United States Service Courts and authorities by legislation the exclusive exercise of jurisdiction in respect of criminal offences by members of the United States Forces in the United Kingdom is based upon the further assumption that satisfactory machinery will be devised between the competent American and British authorities for such mutual assistance as may be required in making investigations and collecting evidence in

respect of offences which members of the United States Forces are alleged to have committed, or in which they are alleged to be concerned. His Majesty's Government have no doubt that the United States Government will agree that it would as a general rule be desirable that such preliminary action should be taken by the British authorities, on behalf of the American authorities, where the witnesses or other persons from whom it is desired to take statements are not members of the United States Forces. Conversely, His Majesty's Government trust that they may count upon the assistance of the American authorities in connexion with the prosecution before British courts of persons who are not members of the United States Forces where the evidence of any member of these Forces is required or where the assistance of the American authorities in the investigation of the case (including the taking of statements from the American forces) may be needed.

9. His Majesty's Government in the United Kingdom are prepared to extend the proposed legislation where necessary to British Colonies and Dependencies under their authority, other than those British territories in which are situated the United States Military and Naval Bases leased in pursuance of the Agreement of 27th March, 1941, where the question of jurisdiction is already regulated by that Agreement. I accordingly propose that the foregoing paragraphs of this note, and your eventual reply, should be regarded as extending also to the arrangements to be made in the British Colonies and Depend-

encies to which the proposed legislation may be applied.

10. Finally, His Majesty's Government propose that the foregoing arrangements should operate during the conduct of the conflict against our common enemies and until six months (or such other period as may be mutually agreed upon) after the final termination of such conflict and the restoration of a state of peace.

11. If the foregoing arrangements are acceptable to the United States Government, I have the honour to propose that the present note and Your Excellency's reply be regarded as constituting an agreement between the two Governments to which effect shall be given as from the date on which the legislation to which I have already referred takes effect.

I have the honour to be,

With the highest consideration,

Your Excellency's obedient servant,

ANTHONY EDEN.

His Excellency

The Honourable

JOHN G. WINANT.

EMBASSY OF THE

UNITED STATES OF AMERICA.

London, 27th July, 1942.

No. 1919

SIR, I have the honor to refer to your note of July 27, 1942, in which you inform me that His Majesty's Government in the United Kingdom is prepared, subject to the necessary Parliamentary authority, to give effect to the desire of the

Government of the United States that American authorities have exclusive jurisdiction in respect to criminal offences which may be committed in the United Kingdom by members of the American Forces. I now have the honor to inform you that my Government agrees to the several understandings which were raised in your note.

In order to avoid all doubt, I wish to point out that the Military and Naval authorities will assume the responsibility to try and on conviction to punish all offences which members of the American Forces may be alleged on sufficient evidence to have committed in the United Kingdom.

It is my understanding that the present exchange of notes is regarded as constituting an agreement between the two Governments to which effect shall be given as from the date on which the necessary Parliamentary authority takes effect.

Accept, Sir, the renewed assurance of my highest consideration.

JOHN G. WINANT.

The Right Honourable

ANTHONY EDEN, M. C., M. P.